



MINUTES

Medical Malpractice Study Committee

October 5, 2005

MEMBERS PRESENT:

Senator Bob Brunkhorst,
Co-chairperson
Senator Keith Kreiman,
Co-chairperson
Senator Nancy Boettger
Senator Michael Connolly
Senator William Dotzler, Jr.
Senator Ron Wieck

Representative Kraig Paulsen,
Co-chairperson
Representative Clarence Hoffman
Representative Lance Horbach
Representative Pam Jochum
Representative Jo Oldson

MEETING IN BRIEF

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- I. Procedural Business.
- II. Introductory Comments.
- III. Ms. Susan E. Voss, Iowa Commissioner of Insurance.
- IV. Ms. Trina Caudle, National Conference of State Legislatures (NCSL).
- V. Mr. David Brown, Iowa Defense Counsel Association.
- VI. Mr. Jay Angoff, Iowa Trial Lawyers Association.
- VII. Public Comments.
- VIII. Committee Discussion.
- IX. Materials Filed With the Legislative Services Agency.



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I. Procedural Business.

Call to Order. Temporary Co-chairperson Paulsen called the meeting of the Medical Malpractice Study Committee to order at 9:07 a.m. on Wednesday, October 5, 2005, in Room 22 of the State Capitol.

Adoption of Rules. Members of the Committee adopted rules which are available, upon request, from the Legislative Services Agency.

Election of Permanent Co-chairpersons. Upon motion of Representative Horbach, members of the Committee elected temporary Co-chairpersons Brunkhorst, Kreiman, and Paulsen as permanent Co-chairpersons. Co-chairperson Paulsen indicated that he would preside at this meeting and that one of the other Co-chairpersons would preside at the second meeting of the Committee.

Recess, Adjournment, and Next Meeting. The Committee recessed at 11:30 a.m. and reconvened at 12:37 p.m. The Committee recessed at 1:52 p.m. and reconvened at 2:00 p.m. The Committee recessed at 3:40 p.m. and reconvened at 3:50 p.m. The meeting adjourned at 5:13 p.m. The Committee will reconvene on Monday, November 7, 2005, at 9:00 a.m. in Room 22 of the State Capitol.

II. Introductory Comments.

Co-chairperson Paulsen stated that the issue facing the Committee is to ensure access to quality medical care and he opined that the Committee should focus during their first meeting on collecting facts and data to use for discussion and making recommendations during the Committee's second meeting.

Co-chairperson Kreiman stated that while the government can do only so much to hold down medical costs, the General Assembly should do whatever it can to hold down medical malpractice costs, which are a cost of care.

Senator Boettger stated that she is interested in finding out how proposed solutions impact the people involved.

Co-chairperson Brunkhorst stated that while the malpractice situation in Iowa is not at a critical stage yet, the state must work to prevent the situation from reaching that stage. He mentioned that other states have passed caps on damages, but he noted that there are other ideas which he is open to considering.

Representative Jochum observed that the Committee should collect factual information to find out what is causing malpractice costs to increase.

III. Ms. Susan E. Voss, Iowa Commissioner of Insurance.

Overview. Ms. Susan E. Voss distributed a handout to the Committee entitled "Medical Malpractice Interim." She introduced Ms. Angela Burke Boston, Assistant Commissioner of Insurance, and Ms. Ramona Lee, Actuarial Administrator from the Insurance Division, to the Committee.



History. Ms. Voss presented background information that included a brief history of medical malpractice insurance in Iowa from the 1970s through 2002. She indicated that insurance is a cyclical business where insurance premiums decrease and then increase.

She stated that the 1970s were characterized by an increase in litigation and massive losses in the insurance industry. She stated that during this time many insurers exited the market and doctor-owned insurance carriers were formed. She said that at present approximately 50 percent of the medical malpractice liability insurance is written by such carriers.

Ms. Voss stated that during the 1980s there was a spike in the market characterized by a "crisis of affordability" and a rapid increase in the frequency and severity of claims. She stated that joint underwriting authorities (JUAs) were created as a temporary fix for the problem whereby a state would provide insurance through an assessment mechanism.

Ms. Voss characterized the 1990s as "the perfect storm" where the frequency and severity of claims continued to rise while investment yields and interest rates declined, leading insurers to demand large premium increases. She stated that in 2001, St. Paul, which was Iowa's second largest malpractice carrier, exited the market, leaving thousands of doctors, hospitals, and other providers and facilities without coverage.

Ms. Voss stated that in 2002 the Insurance Division responded to the problem by holding a series of meetings with providers, insurance agents and carriers, the legal community, and others to examine the medical malpractice insurance market in Iowa, the trends in cost and availability and their comparison nationally, and to attempt to find solutions to the problem.

After the meetings, the division decided to further review the options of pursuing other carriers or the expansion of existing carriers, market assistance by agents, or the possible creation of a JUA. The division concluded that insurance carriers were not interested in expanding in Iowa because they did not have enough capital reserves to be approved by the commissioner or to obtain reinsurance. In addition, market assistance by agents was not easy due to the lack of interested carriers, and it was determined that a JUA was not needed at that time.

Current Market. Ms. Voss then discussed the Iowa market in 2005. She stated that four carriers provide the majority of coverage — Midwest Medical Insurance Company (MMIC), Physicians Insurance Company (PIC) Wisconsin, Preferred Professional Insurance Company, and Medical Protective. She observed that rate increases this year have been in the single digits with the highest at 5 percent and that there have been some decreased rates. She stated that this is the first year in some time that the industry has been profitable. Ms. Voss indicated that there are still areas of concern, which include the fact that medical malpractice insurance has a long "tail" (period of liability) due to the discovery rule and due to long-term settlement payments. She stated that claims continue to increase in frequency and severity, there are concerns with investment income rates, and since there are fewer carriers and Iowa is a small market, insurance in the state is actuarially difficult to price.

Iowa Options. Ms. Voss discussed Code chapter 515, which regulates medical malpractice insurance carriers, and Code chapter 519A, which authorizes the creation of a JUA. She stated that a JUA is intended to be a temporary mechanism and it does not lower rates. She indicated



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that creating a JUA is like creating a new insurance company and that the presence of a JUA lowers the incentive for other insurers to enter the state and pick up the risk.

Ms. Voss mentioned that in 2005, legislation was proposed to set up a patient compensation fund as a state-operated mechanism to pay claims over a fixed amount, with a proposed \$1 million appropriation to get the fund set up and running. She stated that most other states start such a fund with an assessment, so that it takes a while for the fund to become operational.

Ms. Voss stated that the division recently surveyed insurance carriers who left the state and received a wide range of reasons for their withdrawal. She stated that the division continues to hold discussions with carriers, to review the market, and to review what is happening in other states. She stated that there is proposed federal legislation by U.S. Senators Clinton and Obama based on the University of Michigan model.

Ms. Voss stated that evidentiary issues do impact medical malpractice claims and that medical malpractice costs comprise about 2 percent of total health care spending. She stated that the division wants to provide the services that consumers want but will not approve more coverage than a company is equipped to handle. She concluded that Iowa is a good place to do business.

Discussion.

Co-chairperson Paulsen. Co-chairperson Paulsen asked whether there was interest by insurers in doing business in Iowa. Ms. Voss responded that while St. Paul left the entire market, several other companies are very interested in entering the Iowa market.

Co-chairperson Kreiman. Co-chairperson Kreiman asked how rates and rate increases are approved. Ms. Voss deferred to Ms. Lee, who explained that she looks at proposed rates to see if they are appropriate for the coverage being offered, are actuarially sound, and are supported by the company's experience in Iowa. She said that a company that does not have sufficient Iowa experience may be allowed to use another company's experience and rates. In response to Co-chairperson Kreiman's question, Ms. Lee indicated that consideration of an insurer's investment income yield is appropriate for medical malpractice insurance since claims may occur in the future.

Co-chairperson Kreiman asked who represents consumer interests when there may be a conflict because the same body that approves rates is also encouraging insurers to do business in the state, and he queried whether other states have a consumer insurance advocate similar to this state's Utilities Board. Ms. Voss responded that California has a hearing procedure for approval of insurance premium rates. She stated that Iowa has the lowest automobile insurance rates in the nation and that if Iowa can get more competition and more companies in the state writing medical malpractice insurance, the experience might be similar. She stated that the medical community in Iowa is not in favor of paying assessments to a patient compensation fund to solve the problem.

Co-chairperson Kreiman asked how Iowa medical malpractice insurance rates in Iowa compare to those of other states. Ms. Voss estimated that Iowa is at the low end and that she would obtain information showing how rates for different medical specialties compare between states. Ms. Lee added that varying laws and other factors may account for rate variations in other states.

Representative Hoffman. Representative Hoffman stated that he had recently attended a conference in New Mexico and spoken to a representative of a large carrier about doing business



in Iowa. He stated that he was told that the carrier was not interested in Iowa because the market is small and Iowa does not have a cap on damages. He indicated that he did not like damage caps but the committee might consider that approach if caps would lower consumer costs. He observed that Nebraska has damage caps and rates are lower there.

Representative Hoffman also asked whether doctor-owned insurance companies are for-profit and have a conflict of interest. Ms. Voss stated that most provider-owned companies are mutuals and are well run with no evidence of double-dipping or conflicts. She stated that Vermont is the gold standard for risk-retention groups although that state does not have a guaranty fund as a backstop.

Senator Boettger. Senator Boettger asked whether the Insurance Division tracks claims. Ms. Voss responded that the division does not track the number of claims filed or require companies to provide that information, although the division could conduct a survey of carriers to obtain claims information. Ms. Voss further explained that there is a difference between lawsuits filed and claims received, and she noted that since the division only looks at claims, claims filed could be up while lawsuits filed could be down. She stated that eight out of 10 lawsuits result in defense verdicts, but the carrier still incurs defense costs. In response to a request from Co-chairperson Paulsen and Representative Boettger, Ms. Voss stated that she would ask insurers for information about how many claims they receive from year to year.

Representative Horbach. Representative Horbach noted that 70 percent of the Iowa medical malpractice insurance market is covered by four companies. He queried whether a \$1 million claim made in Chicago could be used by a company as a reason to support increasing insurance rates in Iowa. Ms. Lee responded that the company would have to support the increase in Iowa with evidence of the company's experience in this state.

Representative Horbach stated that damage caps were not an option in the past and the state looked at other areas to reduce rates such as direct reduction of costs. He stated that one solution might be requiring a certificate of merit to reduce the filing of frivolous claims and making changes to discovery laws by requiring an immediate transfer of information between parties for faster settlement of claims and lower litigation costs. Co-chairperson Kreiman suggested talking about expedited discovery with attorneys who would make presentations to the Committee in the afternoon.

Representative Horbach also suggested focusing on specialties, such as obstetrics and neurosurgery, that have the most problems with high malpractice insurance rates. He stated that his local hospital, the Grundy County Hospital, no longer performs deliveries of babies and patients must make a 40-minute drive to another hospital for that care now. He noted that there is a difference between medical liability insurance and homeowner's insurance because of the tail liability of medical malpractice coverage. He concluded that Iowa should try to get as many carriers doing business in the state as possible.

Senator Dotzler. Senator Dotzler stated that the problems that Iowa faces are not unique to this state. He indicated that he attended a National Conference of State Legislatures (NCSL) forum on medical malpractice and learned that in 2005 over one-half of the states addressed medical malpractice issues and rates. He noted that is difficult to obtain accurate information and that only Texas and Florida maintain a database of claims and lawsuits, including information such as



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number of claims and amounts paid, number of lawsuits and amounts awarded, and defense costs. He stated that the data suggests that there has been little change in claims and that juries are not awarding more damages than in the past.

Senator Dotzler stated that the problem is with insurers' individual investments and that if an insurer's investment income declines, the insurer has to raise rates to maintain its reserves. He asked whether the division has information about each insurer's assets. Ms. Voss indicated that Iowa law requires an insurance company to conduct its investments within certain boundaries and limits the company to certain types of investments. She stated that the division does a financial examination of each company to make sure that it is meeting these legal requirements.

Senator Dotzler asked how the division satisfies itself about the accuracy of the company's support for a rate increase and what percentage of rate increase requests are denied. Ms. Voss and Ms. Lee indicated that the division does not usually deny outright a rate increase request but instead requires further information to support the request and attempts to work with the company. Ms. Lee stated that the division looks at supporting data and at whether the company's reserves are low based on the claims paid and investments.

Senator Dotzler reiterated that it is difficult to make comparisons without data. Ms. Voss observed that the database in Florida and Texas probably involves a joint effort between the insurance department and the judiciary to obtain not only claims information but information about lawsuits, such as verdicts and settlements. She stated that the Iowa Insurance Division does not request information about lawsuits although such information might be available from the bar, the judiciary, or professional licensing boards.

Senator Dotzler stated that he would like to see a breakdown of rate information comparing Iowa to neighboring states. Co-chairpersons Kreiman and Paulsen indicated that they would like to see a comparison of reserve requirements between Iowa and other states. Ms. Voss stated that the minimum reserve in Iowa is \$1 million and that an insurer must adjust its rates to meet the risks on its books by using a fluctuating formula prescribed by the state. She stated that this formula was created in a Model act that is the same in every state to help companies doing business in multiple jurisdictions. She stated Iowa is a member of a national organization that monitors the financial solvency of insurance carriers.

Senator Wieck. Senator Wieck asked what it would take to establish a database of information concerning medical malpractice lawsuits. Ms. Voss stated that some settlements are confidential and information about verdicts and other costs would require some type of reporting by the courts.

Senator Wieck queried why rates are down. Ms. Voss responded that companies have been pricing liability "tails" more appropriately and that physicians and hospitals have been using quality control and risk management measures which have positively impacted insurers' loss experience.

Representative Jochum. Representative Jochum asked why Iowa Code chapter 515F does not allow consideration of investment income on surplus to determine what rates are needed. Ms. Voss stated that she did not know.

Representative Jochum asked whether the division has ever disapproved a request for a rate increase. Ms. Lee stated that the division does not usually disapprove a request outright but



instead asks for more supporting information, although she recalled instances where the division has issued an outright disapproval.

Representative Jochum asked how many rate filings are made each year, when they become public, and how this compares to other states. Ms. Voss stated that Ms. Lee handles all property and casualty rate filings, with the amount of time spent on each review varying, depending on the company involved. She stated that reviews are made within 10 days of filing and are made public only after approval.

Representative Jochum asked that information be provided at the next meeting about what other states do about providing public notice of rate filings.

Representative Jochum also asked for information comparing doctors' income by specialty compared to medical malpractice rates for that specialty. Ms. Lee stated that she had that information and would provide copies of it to the Committee.

Representative Jochum observed that the decline in obstetrics practice might be due to declining population and lack of profit in pursuing that type of practice. Representative Horbach agreed that the problem is caused by more than malpractice rates.

Senator Connolly. Senator Connolly stated that he was interested in seeing how Iowa compares with other states on rates and asked what the division sees as the problem and what the division recommends. Ms. Voss stated that the problem is the same as with health insurance and there are not enough players in the market. She stated that she would like to find ways to bring more companies into Iowa and the division can help with that goal.

Senator Connolly asked what the division's position is on adopting damage caps. Ms. Voss responded that the division has done a lot of review of damage caps and has concluded that states still have problems with rates and costs whether there are damage caps or not. She pointed out that Minnesota has a healthy market without damage caps and California has a lot of problems and has damage caps.

Co-chairperson Paulsen. Co-chairperson Paulsen queried whether insurance companies are making excessive profits due to lack of competition. Ms. Voss stated that she did not believe that was true because insurers do not like to carry large surpluses and she did not think that they were doing so. She stated that she wonders whether the state has barriers that are not inviting to insurance companies doing business in the state.

Representative Hoffman. Representative Hoffman added that insurance companies are in business for profit and that they will do business in Iowa if they see a potential for profit. He stated that damage caps might encourage companies to come to Iowa and that one major carrier has said that is true. He stated that automobile insurance rates are low in the state because competition is good. He said that the Insurance Division is probably more worried about companies becoming insolvent than making too much profit. Representative Hoffman concluded that the real answer is what the General Assembly can do to bring in more competition and damage caps are one thing to consider.



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Follow-up Questions. Co-chairperson Kreiman stated that the Committee should look at suggestions for what the General Assembly or other agencies can do to assist in getting more insurers to do business in Iowa.

Representative Horbach asked whether investment income is a factor in ratemaking such that investment profit subsidizes rates when profits are high and rates have to increase when investment profits are low. Ms. Lee agreed with this statement.

Senator Dotzler observed that he does not think that insurance companies are bad players and he believes that they should make profits and have adequate reserves. He suggested that the Committee should look at what Minnesota does in allowing medical providers to admit when they make a mistake as a method that works well to increase rapport with patients and reduce claims.

Co-chairperson Brunkhorst. Co-chairperson Brunkhorst asked whether a company that has an unexpected \$1 million loss can use that loss directly as a reason to raise rates. Ms. Lee responded that the loss can be used to support a projection of future loss but cannot be directly recouped with a rate increase. Ms. Voss added that statutory formulas require additions to surplus under certain circumstances. She said that the states cooperate so that they know when a company is in trouble and has inadequate rates.

Co-chairperson Brunkhorst asked how many groups are self-insured and Ms. Voss indicated that there are no risk-retention groups in Iowa now, although the University of Iowa has its own mutual group.

Co-chairperson Brunkhorst asked Ms. Voss what solutions she believes the Committee should focus on. Ms. Voss suggested that the Committee look at certificates of merit and changes in evidentiary rules such as those accomplished in Minnesota through the cooperation of the bar association and the state medical society. Ms. Voss also stated that some insurance companies have indicated a belief that start-up costs are higher in Iowa than in other states.

Information to Be Provided by the Insurance Division. Ms. Voss summarized what information she will provide that the Committee requested:



1. Review average malpractice rates for different specialties in Iowa and surrounding states.
2. Survey the largest medical malpractice carriers in the state regarding the number of malpractice claims filed each of the last five years including any specific data, if available, comparing claims, verdicts, and settlements.
3. Review the impact of investment income on rates and how that information is reflected.
4. Survey the largest medical malpractice carriers in the state regarding the number of lawsuits filed.
5. Review Iowa Code section 515F.4(5) concerning the treatment of income from surplus to determine whether elimination of the last sentence in that subsection disallowing consideration of income from other sources would decrease rates.
6. Consider a possible mechanism to allow for public review of rates prior to approval.
7. Compare other property and casualty insurance to medical malpractice insurance, specifically concerning the health care inflation factor compared to the medical malpractice inflation factor.
8. Make suggestions as to what would assist the Insurance Division in expanding the malpractice insurance marketplace in Iowa, including proposed legislation, if necessary, and involvement of other departments.
9. Facilitate a discussion on the possibility of enacting a certificate of merit program with input from members of the bar and from various health care providers.
10. Find out why the rates for malpractice insurance are only going up, at most, approximately 5 percent for 2006 and seek input from insurance carriers.

Co-chairperson Paulsen asked Ms. Voss to provide the information to the Committee two weeks before the next meeting of the Committee on Monday, November 7, 2005.

Other Suggestions. Representative Jochum advanced the idea of creating a consumer advocate for the insurance industry. Ms. Voss stated that a utility is different than insurance because an insurance customer can shop the market. She stated that in her opinion having a consumer advocate and requiring rate hearings would lengthen the time from the rate request to when the rate could become effective and might increase costs. She stated that currently a request for a rate change can be approved by Ms. Lee within 10 days. She stated that one method might be to allow a rate to go into effect unless there is a complaint.

Co-chairperson Brunkhorst requested that the Insurance Division moderate a discussion with groups interested in medical malpractice insurance issues.

IV. Ms. Trina Caudle, National Conference of State Legislatures (NCSL).

Overview. Ms. Trina Caudle indicated that she is a medical malpractice research analyst with NCSL. Ms. Caudle distributed a handout entitled "A 50 State Perspective" that provided an overview of recent state and federal tort reform action. Ms. Caudle also distributed handouts



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detailing state medical liability laws. She indicated that 48 states, not including Idaho and Nebraska, introduced legislation concerning medical malpractice in 2005. She stated that 31 states enacted such legislation in 2005 and that California had such legislation still awaiting the governor's signature. Ms. Caudle stated that federal tort reform legislation has been passed by the U.S. House of Representatives in the last two years but has not received sufficient votes to be debated in the U.S. Senate.

Ms. Caudle noted that in Iowa in 2005, legislation was proposed to set up a patient compensation fund to assist in paying claims (H.F. 598) and to cap noneconomic damages at \$250,000 (H.F. 704). She also noted the legislation that established this Committee (H.R. 50).

Damage Caps. Ms. Caudle explained that there are generally three categories of caps on damages, including caps on economic damages such as wages and medical expenses, caps on noneconomic damages such as pain and suffering, and caps on punitive damages. She stated that some damage caps have inflation adjustments tied to the Consumer Price Index.

Ms. Caudle stated that according to the American Medical Association, damage caps reduce insurance rates, but a recent study of malpractice claim outcomes in Texas found no relation between malpractice premiums and damage caps and concluded that other forces in the insurance market are responsible for rates. She stated that the NCSL does not yet have a position on this issue and that it may be necessary for damage caps to be in effect for a longer period of time before any conclusions can be drawn.

Pretrial Claim Resolution. Ms. Caudle discussed pretrial resolution of medical malpractice claims, both voluntary and involuntary, used in many states, such as arbitration, mediation, pretrial screening hearings, or some other form of alternative dispute resolution. She also discussed statutes which require affidavits of expert witnesses, expert witness standards, exemptions for doctors who apologize for mistakes, and attorney fee limits. Ms. Caudle said that some states have a "three-strikes" rule where a physician's license is revoked if the physician receives a specified number of adverse verdicts. She also cited changes to statutes of limitations enacted by some states.

Other Options. Ms. Caudle indicated that some states have changed the application of joint and several liability so that a physician is only responsible for the physician's own liability, as in several liability, instead of each physician being responsible for all liability, as in joint liability.

Ms. Caudle said that some states have created state funds to assist in paying medical malpractice claims or insurance premiums and that she could provide more information about this option, if desired.

Ms. Caudle cautioned that it is not really possible to know what methods work until they have been in effect for several years. She stated that insurance rates change due to factors other than lawsuits and that only 1 percent of medical malpractice claims go to a jury. She stated that it is difficult to obtain information about the disposition of lawsuits because the information is often confidential and is not available.



Ms. Caudle stated that the position of NCSL is that issues involving medical malpractice should be a matter of state regulation since the states are in a better position to try new ideas and innovations.

Discussion. Co-chairperson Paulsen asked whether NCSL has any data showing the relationship between rates and damage caps and other solutions that have been implemented. Ms. Caudle stated that she is working on a grant to compile that kind of information but does not have any information on rate increases on a state-by-state basis.

Co-chairperson Kreiman stated that Ms. Caudle provided a good overview of what other states are doing and observed that Iowa already has expert witness standards. He asked whether any states have enacted penalties for frivolous lawsuits and Ms. Caudle responded that such legislation has been proposed but not enacted. Co-chairperson Kreiman asked whether any states require background checks of health care providers and Ms. Caudle stated that New Jersey is the only state to do so.

Co-chairperson Brunkhorst asked what areas the Committee should focus on as being different between Iowa and other states. Ms. Caudle stated that states that enact tort reform seem to go in the same direction. She opined that Iowa is not lagging in tort reform and is not in crisis yet. She stated that according to the American Medical Society, only three states do not have a medical malpractice problem.

Representative Horbach asked whether the information presented only dealt with damage caps on medical malpractice cases and Ms. Caudle indicated that was true, with 26 states having such caps. Ms. Caudle indicated that discovery rules and statutes of limitations vary between states.

Representative Horbach observed that statutes of limitations are important for determining the cost of an insurance tail and that he would like more information about the percentage of lawsuits that go to trial. He questioned whether all possible solutions to the medical malpractice issue are on the table for the Committee to consider.

Co-chairperson Brunkhorst responded that everything should be on the table for the Committee to get information about and then the Committee can focus in and see where they can reach agreement. Co-chairperson Kreiman stated that he had already listed 21 ideas brainstormed so far and, at some point, the Committee must decide which ideas have the votes to be included.

Representative Jochum asked whether it is possible for NCSL to track whether insurance rates came down in California as a result of Proposition 109 or in response to damage caps. Ms. Caudle responded that NCSL's information found that Proposition 109 was more effective in reducing rates.

Representative Jochum also asked how health care spending in the United States compares with the rest of the world and what the role of medical errors and infection rates is in spending. Ms. Caudle stated that medical malpractice is attributed to 1 to 2 percent of health care spending in the United States. Representative Jochum responded that she would distribute an article from "Governing" magazine to the Committee about this issue.

Senator Connolly asked whether NCSL's information showed that premiums are not related to the presence of caps and Ms. Caudle agreed. Representative Jochum asked whether NCSL could



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provide information from the Texas study. Co-chairperson Paulsen asked what states are not considered to be in crisis. Ms. Caudle stated that Louisiana and Wisconsin are not in crisis and Texas is seen as improving.

Representative Hoffman stated that he is concerned about increasing health care costs, especially for prescription drugs, and he asked whether doctors have been sued for prescribing particular drugs, such as Vioxx. Ms. Caudle stated that she did not have that information.

Representative Hoffman asked whether three-strikes license revocations apply the same for general practitioners as specialists and Ms. Caudle indicated that such provisions apply to physicians generally.

Senator Dotzler stated that he would like to see information comparing rates before and after damage caps were enacted in states. He stated that the Texas study has been criticized because damage caps were only in effect for two years when the study was conducted and may not have had enough time to work. He stated that the fact that St. Paul withdrew from all markets, even those states with damage caps, is contradictory and the evidence in support of damage caps is inconsistent.

V. Mr. David Brown, Iowa Defense Counsel Association.

Mr. David Brown stated that he has been an attorney with the Des Moines firm of Hansen, McClintock & Riley since 1978 and does a considerable amount of work in malpractice defense of physicians and hospitals. Mr. Brown stated that Iowa is one of the finest states in the United States for having a balanced court system and in 1962 was one of the first states in the nation to select judges by a merit system.

Mr. Brown stated that there have been changes to tort laws in the past to respond to problems, such as allowing states and counties to be sued; the collateral source rule making medical bills inadmissible in medical malpractice cases; Code section 668.11, which requires designation of an expert witness in malpractice cases within 180 days of filing; and statute of limitations provisions in Code chapter 614. Mr. Brown said that the Iowa Supreme Court has been consistent in dismissing cases that are filed too late.

Mr. Brown said that the Iowa State Bar Association has data indicating that the rates for filings, trials, and verdicts are down for medical malpractice claims. He stated further that in most cases that are tried, the physician and the hospital win and statistics do not support that there is a tort crisis. He said that the data does not relate the presence or absence of insurance carriers to the tort system. Mr. Brown further stated that the Iowa Rules of Civil Procedure already deal with filing frivolous cases by imposing sanctions. He noted that Wisconsin tried tort and insurance reform but it was declared unconstitutional, and similar efforts by Illinois are being considered by that state's supreme court.

Mr. Brown suggested that one solution to lowering defense costs might be to allow plaintiffs and insurers to toll or stop the statute of limitations on a claim for a time to allow the parties to negotiate a settlement. He stated that his association is not in favor of any artificial limit on damages. He further stated that punitive damages are not really a problem since they are awarded in only a



handful of medical malpractice cases and a portion of all punitive damages awarded goes into the State General Fund.

Mr. Brown said that Iowa statutes already require attorney fees to be reviewed in each case based on the case's circumstances and new ethics rules require written attorney fee agreements. Mr. Brown stated that he has never seen any statistics that showed that restricting access to courts correlates with lowering malpractice costs.

Discussion. Co-chairperson Kreiman asked whether it would be helpful to compress discovery times in malpractice cases. Mr. Brown stated that all civil cases in Iowa have to be tried within 18 months of filing. He also said that the federal court has tried the so-called "rocket docket" requiring trial within six months of filing, with the result that people avoid federal court because such a compression of deadlines takes away rights of the parties.

Co-chairperson Kreiman questioned whether there is a way to encourage mediation, such as making a failure to mediate admissible in court. Mr. Brown stated that arbitration is often avoided because it is up or down with no right of appeal, but that mediation is being widely used and is always considered now because it is a flexible way to resolve disputes. He stated that mediation is successful and is a reason that fewer cases are being tried in the state.

Co-chairperson Kreiman noted that a group of anesthesiologists did a national quality improvement project and wondered whether the General Assembly could encourage such improvement activities by making them admissible at trial. Mr. Brown stated that a defendant can present quality assurance initiatives as evidence now and that insurers address such efforts by providers in their rate structures.

Senator Dotzler asked whether increasing the statute of limitations would decrease defense costs and Mr. Brown opined that it is one idea that could be explored.

VI. Mr. Jay Angoff, Iowa Trial Lawyers Association.

Mr. Jay Angoff stated that he is an attorney who is of counsel with the firm of Roger Brown & Associates in Jefferson City, Missouri. He stated that he was asked to speak to the Committee by the Iowa Trial Lawyers Association. He stated that he was formerly the Missouri Insurance Commissioner and also served as a Deputy Insurance Commissioner in New Jersey. Mr. Angoff distributed a handout entitled "The Medical Malpractice Insurance Cycle: Evidence, Causes, Solutions" and a study he authored that was commissioned by the Center for Justice and Democracy entitled "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry."

Mr. Angoff characterized New Jersey as a state of tough insurance regulation and Missouri as a deregulatory state. He opined that Iowa is more like Missouri in its regulatory stance.

Mr. Angoff stated that in Chart 1 of his handout the loss ratio of an insurance company equals the projected claims payments plus loss adjustment expenses divided by premiums earned. He stated that a lower loss ratio means the company is more profitable and a higher loss ratio signifies less profitability. He presented data which he opined indicated that the medical malpractice insurance market in Iowa from 1991-2004 was much more profitable than on a countrywide basis.



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Mr. Angoff then discussed Chart 2 of his handout, which reflected pure loss ratio, which equals projected claims payments divided by premiums earned, leaving out expenses, and opined that the data showed that medical malpractice insurance in Iowa during that same period was twice as profitable as it was nationally.

Mr. Angoff stated that Chart 3 compared the profitability of medical malpractice insurance versus other types of insurance in Iowa and he opined that the data showed that medical malpractice insurance was more profitable than most other types of insurance.

Mr. Angoff stated that Chart 4 provided data concerning premiums paid for medical malpractice insurance in 2003 by specialty to three different carriers compared to the average compensation earned by a provider in that specialty. He concluded that a physician can save money by shopping because premiums vary widely between carriers. Mr. Angoff opined that Iowa physicians spend a much smaller percentage of their income on medical malpractice insurance than physicians in other states.

In discussing Charts 5 and 6, Mr. Angoff stated that the data show that the amount of premiums collected is much higher than what is actually paid out as losses.

Mr. Angoff stated that Iowa is a great jurisdiction for insurance company profits and low physician premiums. He stated that Iowa has 25 medical malpractice insurance carriers in a state with only three million people.

He suggested that Iowa Code section 515F.4(5) be changed to permit the consideration of investment income on surplus in ratemaking to allow for lower premiums. He stated that not allowing consideration of this factor is a quirk of Iowa law that is not found in many, if any, other states. In response to a question from Representative Jochum, Mr. Angoff opined that such a statutory change would result in premiums being lowered by 5 to 10 percent. He stated that insurance carriers have reserves, which are kept to pay future claims, and surplus, which is also used to pay future claims and is comprised of investments, including mostly bonds, stocks, and mortgages.

Mr. Angoff also suggested that Iowa Code section 515F.5(1)(d) should be changed so that rate filings in Iowa are made public when they are filed, not when they become effective, so that they can be challenged. He stated that Iowa is the only state where rate filings are expressly nonpublic. Mr. Angoff also suggested that in dealing with proposed rate increases, the state should establish objective standards that insurers must follow in setting rates, authorize the Insurance Commissioner to order refunds to physicians who have paid excessive rates, require approval of the Insurance Commissioner for rate increases, give more power to policyholders by enabling physicians to obtain quotes for malpractice insurance on the Insurance Division website, and authorize someone to intervene and challenge proposed rate increases.

Mr. Angoff stated that Iowa is a prior approval state where a rate filing goes into effect in 30 days unless the Insurance Commissioner acts as compared to those states where a rate filing is not effective until the Insurance Commissioner acts.

Mr. Angoff stated that six other states have some type of consumer advocate for insurance.



Discussion. Senator Connolly asked why more insurance companies are not doing business in Iowa if it is so profitable here. Mr. Angoff said that in some states the medical society acts as an agent of the insurance carrier and gets a percentage of premiums collected so that the society makes more money when premiums are high. Mr. Angoff also suggested that the medical malpractice insurance industry has been consolidating, raising antitrust concerns, citing the fact that Midwest Medical Insurance Company is now owned by Berkshire Hathaway. He also opined that the insurance cycle has turned so that insurance companies are reaping all-time high profits and carrying high surpluses. He stated that this situation is good for consumers and physicians.

Representative Horbach observed that even if there are 55 carriers doing business in the state, they do not all bid on all business so there is often only one bid for certain business. He also questioned why there are not more companies doing business in Iowa if it is so profitable here. Mr. Angoff responded that it is because Iowa is not that big a market, and he predicted that now that the insurance cycle has turned, Iowa will see more companies entering the market in the state because there is lots of capital available.

Senator Connolly observed that Mr. Angoff had made a very provocative presentation with good data for open discussion and lots of information to pursue. He stated that the two largest medical malpractice insurance carriers in the state are mutuals owned by doctors and the Committee needs to know whether the medical society is involved with those carriers, causing a conflict.

VII. Public Comments.

A. Iowa Medical Society.

Ms. Karla Fultz McHenry. Ms. Karla Fultz McHenry indicated that she is the Vice President for Public Policy and Advocacy for the Iowa Medical Society. She stated that her organization has held meetings including physicians, attorneys, and insurers to study the high cost of medical malpractice insurance. She stated that her group has focused on solutions other than caps and proposes that consideration be given to extending the statute of limitations or standstill agreements to allow parties to negotiate settlements more efficiently, requiring a certificate of merit, mandatory mediation, and further procedures to facilitate the exchange of information between physicians and claimants. Ms. McHenry stated that in 1992 the Iowa State Bar Association and the Iowa Medical Society adopted a "Principles of Cooperation" agreement to facilitate information exchange which could perhaps be reworked for greater effectiveness. Ms. McHenry stated that the Iowa Medical Society is not in favor of a patient compensation fund.

Ms. McHenry also presented a handout which contained the results of a survey of Iowa Medical Society members regarding malpractice insurance concerns, particularly after the sudden exit of St. Paul from the market. She stated that malpractice insurance cost concerns have caused physicians to stop doing procedures or to stop practicing altogether. She also stated that Iowa physicians receive the lowest Medicare reimbursement in the United States.

Mr. John Riccolo. Mr. John Riccolo is an attorney in private practice in Cedar Rapids. He stated that both the Iowa Defense Counsel Association and the Iowa Trial Lawyers Association are working on ways to reduce the cost of litigation in Iowa. He stated that the ideas of having standstill agreements on statutes of limitations or requiring certificates of merit with the filing of a



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malpractice lawsuit in which a physician has reviewed the records and found that the case has merit are not really controversial ideas. He stated that no one wants a patient compensation fund because it is costly and mandatory mediation merely adds another step to the process. He stated that the 1992 "Principles of Cooperation" is essentially principles of civility between the bar and the medical community. He stated that expert witnesses are a huge cost of litigation, with some expert physicians now charging more than \$1,000 an hour for testimony, and that he would suggest setting limits on the number of experts per specialty who may testify in any given case.

Discussion. Senator Connolly asked whether there is any interest in having quotes for medical malpractice insurance available on the Insurance Division website. Ms. McHenry stated that such information is already available on the website, although it only includes base rates since individual underwriting determines the rates for a specific health care provider. Senator Connolly also asked whether the medical society receives any sort of financial reward for serving as an agent for any insurance carrier. Ms. McHenry stated that the Medical Society does not serve as an agent for any carrier, which would be illegal, and there is no relation between any carrier and the Medical Society.

B. Iowa Medical Group Management Association — Ms. Lorelei Heisinger and Mr. James Palazzo.

Ms. Lorelei Heisinger, a lobbyist for the Iowa Medical Group Management Association, introduced Mr. James Palazzo, the CEO of the Iowa Heart Center in Des Moines. Mr. Palazzo stated that the Iowa Heart Center received only two weeks' notice that their malpractice insurance would not be renewed and had to scramble to find new coverage since their hospital privileges are conditioned on having insurance. He stated that the new coverage they were able to obtain had decreased limits, doubled premiums, and a deductible per-claim-increase of over 500 percent. He said that their malpractice insurance costs have made it difficult for the Iowa Heart Center to recruit physicians to join their group.

C. Iowa Podiatric Medical Society — Dr. Paul Dayton.

Dr. Paul Dayton stated that he is a podiatrist who practices in Fort Dodge. He stated that he faced a situation similar to the Iowa Heart Center when his malpractice insurance coverage was abruptly ended by St. Paul. He stated that he was only able to obtain three quotes for a new insurance carrier and his insurance premiums doubled. Dr. Dayton observed that all medical specialties have seen double digit increases in their premiums. He suggested that doing more quality assurance initiatives might be one solution to the situation.

D. Iowa Citizen Action Network — Mr. Matt Russell.

Mr. Matt Russell stated that the Iowa Citizen Action Network is an environmental and consumer watchdog group with a primary interest in health care. He stated that there is a medical malpractice crisis in the United States, with 98,000 people killed each year by medical mistakes in hospitals. Mr. Russell stated that more emphasis on patient safety would lower malpractice costs. He stated that when California beefed up its insurance regulation, it lowered costs when damage caps did not. Mr. Paul opined that cyclical run-ups in premium costs are part of the insurance cycle, so that when interest rates are high, rates are low and when interest rates crash, rates are



increased. Mr. Russell stated that his group is opposed to limiting the liability of health care providers or restricting access to the courts.

E. Iowa Academy of Family Physicians — Ms. Jennifer Harbison.

Ms. Jennifer Harbison stated that the Iowa Academy of Family Physicians represents approximately 1,800 family physicians, which is about 90 percent of the family physicians who practice in Iowa. She stated that if a family physician performs obstetrics or does procedures like colonoscopies, malpractice insurance premiums skyrocket. She said that this forces family physicians to limit their practices and specialists do not settle in rural areas due to insurance costs, so patients are forced to drive long distances to obtain care. She stated that family physicians would like to be able to provide a full spectrum of care. She said that the Iowa Academy of Family Physicians is supportive of the efforts being made by the Iowa Medical Society and supports caps on noneconomic damages as well as a certificate of merit requirement.

F. Interested Citizen — Mr. Vern Dostel.

Mr. Vern Dostel stated that he was before the Committee to discuss his wife, who died as a result of medical negligence in 1996. Mr. Dostel described the circumstances of his wife's surgery, ensuing complications, and death. He opined that there is no such thing as a frivolous lawsuit and that a lawyer will review a case before filing it to decide if there is a claim. Mr. Dostel stated that doctors and hospitals should be held accountable for their negligent conduct and that this is not a political issue.

G. Iowa State Bar Association — Mr. James Carney.

Mr. James Carney, a lobbyist for the Iowa State Bar Association, opined that Iowa is home to one of the world's finest teaching hospitals, an excellent judiciary, a confidential peer review system, and a fine General Assembly that has been very responsive to reforming the state's judicial system. He stated that the General Assembly has enacted over 100 modifications to the judicial system over the years, such as the 1977 change to Iowa Code section 147.136 concerning collateral estoppels, which keeps out evidence of damages for health care costs paid by health insurance. Mr. Carney said that a civil caseload activity report for the state indicates that caseload and jury trials are decreasing. He stated that many counties have never had a medical malpractice case go to trial.

VIII. Committee Discussion.

Representative Hoffman. Representative Hoffman stated that he and Representative Horbach are independent insurance agents who work for the benefit of their clients. He opined that the Committee should be careful of the information presented about insurers' profits because the information can be misleading and that statistics taken out of context can be misleading. He stated that Iowa is fortunate to have Midwest Medical and PIC writing malpractice insurance in the state.

Representative Hoffman also stated that Iowa does get prior approval before rate increases go into effect. He stated that Iowa has one of the best run insurance departments in the country and he was disturbed about innuendos that suggested the contrary.



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Representative Hoffman opined that the insurance industry had been painted badly and he would like to be objective about the issues involved. He queried why Iowa does not have insurance companies lining up to do business in the state if it is so profitable here. He stated that he would like to make efforts to grow the insurance industry in the state and to look for solutions to problems, not beat the industry up. He further commented that the insurance industry in Missouri is not growing and that New Jersey has some of the highest insurance rates in the nation. He agreed that the insurance business is cyclical in nature.

Senator Connolly. Senator Connolly stated that while he found Mr. Angoff's presentation provocative, he was trying to be objective. He opined that Mr. Angoff made specific proposals. He stated that since insurance is the most powerful industry in Iowa, it is necessary for the General Assembly to ask questions. He said that other states have more regulatory structure than Iowa does, but one function of Iowa's insurance department is to make sure that the insurance industry in the state is strong and healthy.

Senator Wieck. Senator Wieck commented that he did not agree with Senator Connolly and would prefer to hear constructive testimony so that the Committee can do something about the situation. He asked that the Committee Co-chairpersons try to review information to be presented to the Committee ahead of time to avoid the type of testimony that was presented to the Committee in the afternoon. Co-chairperson Paulsen responded that he was not aware of what the content of Mr. Angoff's remarks would be.

Co-chairperson Kreiman. Co-chairperson Kreiman stated that he appreciated the time that the Committee spent during the day and that the problem is not with lawyers, doctors, or insurers, but is a systemic problem. He stated that he did not perceive any of the testimony given to be antilawyer, antidoctor, or anti-insurer. He asked what the Committee would like to do for the next meeting — either take more hours of testimony or obtain more written information and spend the next meeting discussing possible solutions. Senator Connolly suggested not taking any additional testimony but instead making a list of all possible items to consider to see whether the Committee can agree on which ones to discuss.

Senators Boettger and Dotzler. Senators Boettger and Dotzler observed that the Committee had not heard much from representatives of the insurance industry. Senator Dotzler stated that costs should be going down since cases are down, so something does not balance. He asked whether the insurance industry could be asked to provide data to show how premiums collected are being spent. He stated that Mr. Angoff raised questions that should be answered.

Co-chairperson Paulsen. Co-chairperson Paulsen suggested hearing two more hours of testimony at the next meeting. He stated that the Co-chairpersons would talk and suggest additional speakers.

Senator Wieck. Senator Wieck stated that he was not bothered by asking questions of the insurance industry but was concerned with how it was done. He stated that the Insurance Division would bring answers to the questions asked by the Committee and that the Committee should give questions to members of the insurance industry in advance of the next meeting of the Committee so they could be prepared to respond to them. Senator Wieck further commented that he was interested in getting the opinion of the Insurance Commissioner on Mr. Angoff's figures.



Representative Horbach. Representative Horbach agreed that the Committee should establish the areas of agreement and disagreement and work on the areas of agreement. Co-chairperson Kreiman responded that he had compiled a list of 25 proposals during the day that he would send to Ms. Rachele Hjelmås, Legal Services Division, Legislative Services Agency, for distribution to all members of the Committee. He stated that he would highlight a few main areas for discussion and said that he suspected there was consensus on a few things.

Representative Jochum. Representative Jochum opined that 5 percent of physicians are responsible for 95 percent of the malpractice problems. She stated that the Committee should be looking at medical incompetency because medical errors and high infection rates are an important cost driver for malpractice insurance premiums.

Next Meeting. The Committee adjourned to its next meeting on Monday, November 7, 2005, at 9:00 a.m. in Room 22 of the State Capitol.

IX. Materials Filed With the Legislative Services Agency.

The items listed below were distributed at or in connection with the October 5 meeting and are filed with the Legislative Services Agency. The materials may be accessed from the "Additional Information" link on the Committee's Internet page:

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=72>

1. 10/5/2005 — Committee Presentation: Jay Angoff, "The Medical Malpractice Insurance Cycle: Evidence, Causes, Solutions"
2. 10/4/2005 — Jay Angoff, "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry," July 2005
3. 10/3/2005 — Comments on Report by Jay Angoff, Towers Perrin, August 2005
4. 10/2/2005 — Committee Presentation: Trina Caudle, National Conference of State Legislators
5. 10/1/2005 — Committee Presentation: Susan Voss, Iowa Insurance Commissioner
6. 9/28/2005 — Background Information for Medical Malpractice Insurance Interim
7. 9/28/2005 — Attachment B, Proposed Committee Rules
8. 9/28/2005 — Attachment C, Legislation Requesting the Committee — HR 50
9. 9/28/2005 — Attachment D, Proposed Legislation on Noneconomic Caps in Medical Malpractice Cases — HF 704
10. 9/28/2005 — Attachment E, Proposed Legislation — Patient Compensation Fund — HF 598
11. 9/28/2005 — Attachment F, Council of State Governments (CSG): Evaluating State Approaches to the Medical Malpractice Crisis
12. 9/28/2005 — Attachment G, CSG Transcript from April 2004 Council of State Governments Teleconference — Evaluating State Approaches to the Medical Malpractice Crisis



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13. 9/28/2005 — Attachment H, National Conference of State General Assemblys (NCSL) Medical Malpractice Tort Reform — Background
14. 9/28/2005 — Attachment I, NCSL State Medical Malpractice Tort Laws
15. 9/28/2005 — Attachment J, NCSL 2005 Enacted Medical Liability Legislation — States
16. 9/28/2005 — Attachment K, NCSL State Medical Malpractice Reform Action 2005
17. 9/27/2005 — Iowa Action Network Comments
18. 9/27/2005 — Iowa Bar Association Comment Documents
19. 9/27/2005 — Iowa Hospital Association Comments
20. 9/27/2005 — Iowa Insurance Institute Comments
21. 9/27/2005 — Iowa Medical Group Management Comments
22. 9/27/2005 — Iowa Medical Society Comments
23. 9/27/2005 — Iowa Osteopathic Medical Association Comments
24. 9/27/2005 — Iowa Osteopathic Medical Association Document A
25. 9/27/2005 — Iowa Osteopathic Medical Association Document B
26. 9/27/2005 — Iowa Podiatric Medical Society Comments
27. 9/27/2005 — Polk County Medical Society Comments
28. 9/27/2005 — Vern Dostal Citizen Comments
29. 9/26/2005 — "Governing" Magazine Article, "Plague of Errors," August 2005

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